

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AUSTIN MICHAEL WYNN,

Defendant-Appellant.

UNPUBLISHED

June 10, 2014

No. 315329

Branch Circuit Court

LC No. 10-089436-FC;
10-089451-FC

Before: CAVANAGH, P.J., and OWENS and STEPHENS, JJ.

PER CURIAM.

Following a remand from this Court for resentencing, *People v Wynn*, unpublished opinion per curiam of the Court of Appeals, issued September 20, 2012 (Docket Nos. 305382 and 305384), defendant appeals as of right his sentences for his jury trial convictions of two counts of armed robbery and two counts of conspiracy to commit armed robbery. MCL 750.529; MCL 750.157a. In lower court no. 10-089436-FC, defendant was resentenced to serve 210 to 600 months' imprisonment for one of his armed robbery and conspiracy to commit armed robbery convictions. In lower court no. 10-089451-FC, defendant was resentenced to serve 225 to 600 months' imprisonment for his other armed robbery and conspiracy convictions. We affirm.

Defendant's convictions arise from the robbing of a food mart at a gas station, for which he confessed his involvement, as well as a credit union that same day, for which he admitted no involvement. Following his convictions, defendant appealed as of right to this Court, which affirmed his convictions but remanded for resentencing. *Wynn*, unpub op at 4. Specifically, this Court determined that the trial court erred when it scored 25 points for OV 13. *Id.* at 3-4. Because defendant asserted other claims of error with regard to his sentencing, this Court briefly addressed those claims to avoid reoccurrence of the error on remand. *Id.* at 4-5. These claims of error included the scoring of OVs 4 and 19.

With regard to the trial court's decision to score ten points for OV 19, this Court determined "[b]ecause the record evidence supported the trial court's finding that Wynn interfered with the investigation by disposing of evidence, the trial court did not err when it scored OV 19 at ten points." *Wynn*, unpub op at 4. Specifically, the record showed that Wynn interfered with the investigation by discarding evidence from the credit union robbery when he drove away. *Id.* This Court noted that according to *People v Ericksen*, 288 Mich App 192, 204;

793 NW2d 120 (2010), this was sufficient evidence to score ten points for OV 19. *Wynn*, unpub op at 4.

With regard to the trial court's decision to score ten points for OV 4, this Court determined that in both cases, the victims expressed their fear in that they were "terrified" and afraid, which under *People v Davenport (After Remand)*, 286 Mich App 191, 200; 779 NW2d 257 (2009), was sufficient evidence of serious psychological injury requiring professional treatment. *Wynn*, unpub op at 5.

In the present appeal, defendant only asserts claims of error with regard to the trial court's scoring of OV 4 and 19. Pursuant to the law of the case doctrine, if an appellate court has decided a legal issue and remanded the case for further proceedings, the legal issues already determined by the appellate court will not be determined differently on a subsequent appeal in the same case where the facts remain materially the same. *People v Davis*, 300 Mich App 502, 508-509; 834 NW2d 897 (2013) (citation omitted). However, the law of the case doctrine does not apply where a case is remanded without directions to the trial court. *Id.*

In defendant's first appeal, this Court remanded for resentencing due to the trial court's error in scoring OV 13, and it explicitly stated it was addressing defendant's remaining claims of error with regard to sentencing to avoid reoccurrence of any error on remand. As discussed, this Court then made specific findings regarding the trial court's scoring of OV 4 and OV 19 and further found that these OVs were correctly scored. Given that the facts remained the same and that this Court made specific findings, we conclude that the law of the case doctrine is applicable to the issues raised in this appeal and precludes this Court from making new findings with regard to the scoring of OVs 4 and 19.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Donald S. Owens
/s/ Cynthia Diane Stephens